

Summary of the Constitutional Court Ruling No. 52/2546

Dated 30th December B.E. 2546 (2003)*

Re : The Election Commission requested for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the powers and duties of the Election Commission under section 145 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Election Commission, the applicant, filed an application dated 26th June B.E. 2545 (2002) requesting for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case where Supreme Administrative Court Order No. 84/2544 dated 30th October B.E. 2544 (2001) ruled that the Election Commission and Constituency Election Commission, in relation to the administration of elections, could be subject to legal proceedings in the Administrative Court by virtue of section 271 and section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in conjunction with section 3, section 9 and section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

The facts in the application and supporting documents could be summarized as follows. Mr. Kowit Suraswadee, House of Representatives election candidate, Constituency No. 30 (Bangkok Noi), Bangkok Metropolis (in the general election of 6th January B.E. 2544 (2001)), had filed a case against the Election Commission and the Election Commission for Constituency No. 30, Bangkok Metropolis, at the Central Administrative Court. It was alleged that there were circumstances surrounding the Election Commission for Constituency No. 30, Bangkok Metropolis, that indicated an intent to commit election corruptions in its capacity as the competent official by unlawfully and corruptly issuing three overlapping Orders of the Election Commission for Constituency No. 30, Bangkok Metropolis, No. 17/2543, Re: Appointment of a Committee for Vote-Counting in the Election of Members of the House of Representatives for Constituency No. 30 which contained false statements. An application was made for the Central Administrative Court to give a judgment or an order to the effect that Order No. 17/2543 was unlawful as well as the revocation of such order.

The Central Administrative Court ruled that the law did not personally empower members of the Election Commission to issue by-laws, orders or other resolutions affecting

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persons. Therefore, each member of the Election Commission for Constituency No. 30, Bangkok Metropolis, was not a State official under section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999). The Central Administrative Court was unable to admit all cases filed in relation to members of the Election Commission and the Election Commission for Constituency No. 30, Bangkok Metropolis. Even if a case was filed against the Election Commission and the Election Commission for Constituency No. 30, Bangkok Metropolis, in their capacities as the Election Commission or the Election Commission for Constituency No. 30, being State officials under section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), and subject to proceedings in the Administrative Courts, the fact that Mr. Kowit Surasawadee had objected to the proceedings of the Election Commission for Constituency No. 30, Bangkok Metropolis, and had filed complaints with the Election Commission requesting a refusal of certification of the election results for Constituency No. 30, Bangkok Metropolis; the Election Commission's subsequent ruling that no wrongdoings were found and votes would not be recounted entailed that the Election Commission had exercised its adjudicative powers vested in it under section 145 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such an exercise of powers was final and conclusive. The court was unable to admit the case for consideration or issue an order otherwise.

Mr. Kowit Surasawadee appealed the order of the Central Administrative Court to the Supreme Administrative Court. He claimed that he intended to file a case against the Election Commission and the Constituency Election Commission for colluding in the issue of an order which made overlapping appointments of Vote-Counting Committee members, thereby allowing corruption, and did not intend to file cases in their personal capacities. Mr. Kowit Surasawadee requested for an order of the Supreme Administrative Court to instruct the Central Administrative Court to admit the case. The Supreme Administrative Court issued Order No. 84/2544, dated 30th October B.E. 2544 (2001), that an Election Commission or a Constituency Election Commission was a State official under section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), which stated that "State official means... (2)... committee or person empowered by law to issue any by-law, order or resolution affecting persons" and all such types of State officials should at least be "under the supervision or superintendence of the Government". Because the word "Government" entailed a wider meaning than "Council of Ministers", whereby it extended to the "State in its capacity as agent of the nation", and not restricted to "Council of Ministers or Ministers of Ministries or Sub-Ministries", the Election Commission and the Constituency Election Commission could therefore be subject to proceedings in the Administrative Courts.

The Election Commission was in disagreement with Supreme Administrative Court Order No. 84/2544, dated 30th October B.E. 2544 (2001), and therefore requested for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the powers and duties of the Election Commission.

The Constitutional Court instructed the Election Commission and the Supreme Administrative Court to submit an opinion as well as a written statement for the court's deliberation pursuant to the relevant provisions of the Rules of the Constitutional Court on Constitutional Court Procedure.

2. The issues considered by the Constitutional Court

The preliminary issue considered was whether or not the Constitutional Court had the power to accept the Election Commission's application for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), stated that "in the case where a dispute arises as to the powers and duties of organs under the Constitution, such organs or the President of the National Assembly shall submit a matter together with the opinion to the Constitutional Court for decision."

The Constitutional Court held the following opinion. The Election Commission and the Administrative Court were organs established by section 136 and section 276 of the Constitution respectively and were both vested with constitutional powers and duties. The Election Commission and the Administrative Court therefore had the standing of an organ under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the Election Commission and the Administrative Court were organs under the Constitution and there was a dispute on the powers and duties of organs under the Constitution, the Constitutional Court could accept the Election Commission's application for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The issue considered by the Constitutional Court was whether or not an exercise of powers by the Election Commission on the investigation and fact-finding inquiry and the adjudication of problems or disputes under section 144 paragraph two pursuant to section 145 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was conclusive.

Section 144 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided for the general powers and duties of the Election Commission. The Election Commission was entrusted with the charge and control of the election of members of the House of Representatives, senators, members of local assemblies or local administrators as well as referendums rendering them to proceed in an honest and fair manner. Such powers were specifically vested in the Election Commission to take charge and control of the administration of an election under various laws referred to in section 144 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), prescribed details and procedures for the implementations of such powers and duties under paragraph one. Thus the powers and duties in this regard were powers and duties under the Constitution.

In this application, the discharge of functions by the Election Commission for Constituency No. 30, Bangkok Metropolis, by issuing an order appointing a Vote-Counting Committee for Election of Members of the House of Representatives was effected in order to obtain a Vote-Counting Committee for the counting of votes in the place of vote-counting in each constituency. This led to the adjudication of problems or disputes arising under laws referred to in section 144 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and especially the organic law on election of members of the House of Representatives and senators, which eventually lead to the investigation and inquiry of the Election Commission under section 145 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In this respect, the announcement of election results by the Election Commission under section 145 paragraph one subparagraph (5) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was an exercise of powers under section 145 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), not an exercise of Government or administrative powers.

Therefore, the empowerment of the Election Commission with powers and duties to conduct investigations and fact-finding inquiries as well as to adjudicate problems or disputes arising under laws referred to in section 144 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), bore the characteristics of an exercise of constitutional powers. The ruling of the Election Commission in pursuance of an exercise of powers under section 145 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was therefore conclusive.

3. Ruling of the Constitutional Court

The Constitutional Court held unanimously that an exercise of powers and duties by the Election Commission in relation to the conduct of investigation and fact-finding inquiries and adjudications of problems or disputes arising under the law referred to in section 144 paragraph two, pursuant to section 145 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was conclusive.
